

**COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA,
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ILLINOIS, COMMONWEALTH OF MASSACHUSETTS, MARYLAND,
MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, NEVADA,
OREGON, VERMONT, WASHINGTON, AND THE CORPORATION
COUNSEL OF THE CITY OF NEW YORK**

June 1, 2020

Comments submitted via e-mail:
GSFLIRL2019STD0030@ee.doe.gov
U.S. Department of Energy
Appliance and Equipment Standards Program

**Re: Docket No. EERE-2019-BT-STD-0030
Energy Conservation Program: Energy Conservation Standards for General
Service Fluorescent Lamps and Incandescent Reflector Lamps**

The undersigned State Attorneys General and Corporation Counsel respectfully submit these comments in response to the Department of Energy (DOE) May 1, 2020 request for information (RFI) to inform its evaluation of whether the current energy conservation standards for general service fluorescent lamps (GSFL) and incandescent reflector lamps (IRLs) should be amended. 85 Fed. Reg. 25,326. DOE is soliciting information on 47 issues relevant to its assessment of whether amended GSFL and IRL standards would result in significant energy savings and whether such standards would be technologically feasible and economically justified. In these comments, we focus on one central issue: the appropriate baseline standard for DOE’s IRL analysis. As explained in greater detail below, DOE’s evaluation must consider, as a starting point for improved IRL efficacy levels, the Congressionally mandated 45 lumens per watt “backstop standard” applicable to general service lamps under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6295(i)(6)(A)(v). Any standard ultimately selected that is less stringent than this efficacy level would be unlawful and unjustifiably result in increased energy costs for consumers and businesses, and harmful pollution that threatens the health and wellbeing of the residents of our jurisdictions.

In 2017, DOE issued two final rules which, among other things, expanded the definition of “general service lamp” (GSL) to include IRLs (“Definition Rules”).¹ Although DOE subsequently issued a final rule in 2019 purporting to withdraw the Definition Rules², that rule has been challenged by the undersigned states as well as non-governmental organizations.³ As

¹ 82 Fed. Reg. 7276 (Jan. 19, 2017); 82 Fed. Reg. 7322 (Jan. 19, 2017).

² 84 Fed. Reg. 46,661 (Sept. 5, 2019).

³ On November 4, 2019, a coalition of fifteen states, the District of Columbia and the City of New York filed a petition for review of DOE’s final rule “withdrawing” the 2017 Definition Rules. *State of New York, et al. v. DOE*,

stated in our brief⁴ in that matter, DOE's attempted revocation of the Definition Rules is unlawful because it violates EPCA's anti-backsliding provision and DOE lacks authority to create new exemptions from the general service lamp definition. Pending judicial resolution of those issues, DOE's review of the IRL standards should abide by the 2017 Definition Rules, which define an IRL as a general service lamp.

Yet, in its current evaluation of the IRL standards DOE has tentatively determined to use the IRL standards set forth at 10 CFR 430.32(n)(6) as the baseline efficiency standard, instead of the mandatory backstop standard applicable to general service lamps pursuant to 42 U.S.C. § 6295(i)(6)(A)(v). This approach is inconsistent not only with EPCA's backstop provision, but also with the statute's anti-backsliding provision, 42 U.S.C. § 6295(o)(4). Accordingly, any agency determination to amend the IRL standard with a standard less stringent than the backstop would violate EPCA. DOE must acknowledge the 45 lumens per watt backstop as the baseline standard for IRLs before it can properly determine whether to amend the IRL standard.

I. Background

DOE's energy efficiency program generates substantial economic and environmental benefits. By 2030, DOE projects the program will result in more than \$2 trillion in cumulative utility bill savings for consumers and 2.6 billion tons in avoided carbon dioxide (CO₂) emissions.⁵ Efficiency standards for light bulbs alone are expected to cumulatively save 1.5 trillion kilowatt hours of energy and reduce CO₂ emissions by 700 million metric tons (MMT), equivalent to taking nearly 150 million cars off the road for a year, or more than enough to meet the electricity needs of every American household for one year.⁶ A DOE-funded analysis estimated that by the year 2030, the 45 lumens per watt backstop standard for IRLs would result in up to \$ 97 billion in energy savings and 240 MMT of CO₂ emissions reductions.⁷

A. Efficiency Standards Under EPCA

EPCA directs DOE to establish energy conservation standards covering most major household appliances and many types of commercial equipment. DOE's energy conservation program includes testing, labeling, and enacting energy conservation standards, plus product

No. 19-3652 (2d Cir. 2019). Several non-governmental organizations also petitioned for review. *NRDC, et al. v. DOE*, No. 19-3658 (2d Cir. 2019). Those cases have been consolidated and are pending.

⁴ See Governmental Petitioners' Proof Brief (Mar. 16, 2020) (*State of New York v. DOE*, No. 19-3652, ECF No. 176).

⁵ See DOE Fact Sheet, "Saving Energy and Money with Appliance Equipment Standards in the United States" (Jan. 2017), available at:

https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf, see also DOE Fact Sheet, "Saving Energy and Money with Appliance and Equipment Standards in the United States" (Feb. 2016), available at:

<https://www.energy.gov/sites/prod/files/2016/02/f29/Appliance%20Standards%20Fact%20Sheet%20-%202017-2016.pdf>.

⁶ Appliance Standards Awareness Project, "Appliance Standards Fact Sheet: Light Bulb Efficiency Standards" (June 2016), available at https://appliance-standards.org/sites/default/files/Fact_sheet_light_bulbs.pdf.

⁷ Kantner et al., Lawrence Berkeley National Laboratory, "Impact of the EISA 2007 Energy Efficiency Standard on General Service Lamps" at 29 (Jan. 2017) available at <https://eta-publications.lbl.gov/sites/default/files/lbnl-1007090-rev2.pdf> at 29.

certification and compliance enforcement. Under EPCA, any new or amended standard DOE prescribes for consumer products must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Moreover, the standard must result in a significant conservation of energy. 42 U.S.C. § 6295(o)(3)(B). EPCA requires DOE to periodically review product standards and determine whether they should be amended. 42 U.S.C. §§ 6295(m)(1), 6313(a)(6)(C)(i).

Importantly, EPCA contains an anti-backsliding provision that states: “The [DOE] Secretary may not prescribe any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency, of a covered product.” 42 U.S.C. § 6295(o)(1). Congress amended EPCA in 1987 to include the anti-backsliding provision in order to ensure steady increases in the efficiency of products covered under DOE’s appliance efficiency program.⁸ EPCA’s prohibition against backsliding also “serves to maintain a climate of relative stability with respect to future planning by all interested parties.”⁹

B. EPCA’s 45 Lumens Per Watt Backstop Standard for General Service Lamps

DOE’s failure to complete a timely rulemaking to adopt standards for general service lamps pursuant to 42 U.S.C. § 6295(i)(6)(A) has resulted in the imposition of EPCA’s mandatory 45 lumens per watt backstop. Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA)¹⁰ directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs.¹¹ For the first rulemaking cycle, Congress directed DOE to initiate a rulemaking no later than January 1, 2014 to evaluate whether to amend energy conservation standards for GSLs. It also directed DOE to determine whether exemptions for certain incandescent lamps should be maintained or discontinued.¹² The required scope of DOE’s rulemaking included non-incandescent lamp technologies and consideration of a minimum standard of 45 lumens per watt for GSLs. In the EISA, Congress provided that DOE also consider the phase-in of effective dates.¹³ Congress further provided that if DOE determined that the standards in effect for GSILs should be amended, DOE was required to publish a final rule by no later than January 1, 2017. 42 U.S.C. § 6295(i)(6)(A)(iii).

Significantly, Congress specified that in the event that DOE failed to timely complete that rulemaking pursuant to 42 U.S.C. § 6295(i)(6)(A)(i)-(iv), or if the final rule from the rulemaking did not produce energy savings greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, then that 45 lumen per watt standard specified by Congress would be triggered as the “backstop” efficiency standard. 42 U.S.C. § 6295(i)(6)(A)(v).

⁸ National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, 1987 U.S.C.C.A.N. (101 Stat.) 103, 114; *see NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004).

⁹ H.R.Rpt. No. 100-11 at 22 (March 3, 1987).

¹⁰ Pub. L. 110-140; 42 U.S.C. § 6295(i)(6).

¹¹ 42 U.S.C. § 6295(i)(6)(A)-(B). General service lamps are defined at 42 U.S.C. § 6291(30)(BB) and include general service incandescent lamps (GSILs), compact fluorescent lamps (CFLs), general service LED lamps, organic LED lamps, and any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps.

¹² 42 U.S.C. § 6295(i)(6)(A)(i).

¹³ 42 U.S.C. § 6295(i)(6)(A)(iv).

DOE has not completed a final rule in accordance with 42 U.S.C. § 6295(i)(6)(A)(i)-(iv) and therefore the backstop is in effect for all general service lamps. DOE's failure to meet the January 1, 2017 deadline triggered EPCA's backstop provision, automatically setting the efficiency standard for general service lamps at 45 lumens per watt, 42 U.S.C. § 6295(i)(6)(A)(v), with an effective date of January 1, 2020.

C. DOE's 2017 Definition Rules Included IRLs in the "General Service Lamp" Definition and DOE's Attempted Revocation of that Rule is Unlawful

On January 19, 2017, DOE promulgated the Definition Rules which revised the definitions of "general service lamps" and "general service incandescent lamps" to include, among other things, IRLs. 82 Fed. Reg. 7322. DOE's attempted revocation of the amended GSL definition in its September 5, 2019 rule (*see* 84 Fed. Reg. 46,661), "withdrawing" the Definition Rules, is invalid. If allowed to stand, DOE's action would reduce the energy efficiency standards applicable to nearly half of the light bulbs used in American homes. EPCA's anti-backsliding provision prohibits DOE from rolling back efficiency standards in that manner. Courts have recognized that EPCA's anti-backsliding provision allows DOE to revise efficiency standards "in one direction only, to make them more stringent." *NRDC v. Abraham*, 355 F.3d 179, 188 (2d Cir. 2004). DOE may not evade this express statutory limitation on its authority by manipulating the definitions of products to exclude them from regulation so that lower efficiency standards (or none at all) apply to previously regulated products. And EPCA does not delegate to DOE the authority to exclude whole categories of products from otherwise-applicable efficiency standards. By rescinding the 2017 Definition Rules, DOE would reduce or eliminate efficiency standards for billions of commonly used light bulbs, precisely what Congress intended the anti-backsliding provision to prevent. DOE's withdrawal of the 2017 Definition Rules is therefore unlawful. Neither those rules nor DOE's related erroneous interpretation of the backstop standard are likely to survive the pending litigation in the Second Circuit.

D. DOE's May 1, 2020 Request for Information

On May 1, 2020, DOE issued a request for information seeking input on 47 issues the agency identified as pertinent to its evaluation of whether to amend the GSFL and IRL standards. 85 Fed. Reg. 25,326. DOE explained that as part of its analysis the agency estimates the relative cost-efficiency of products at different efficiency levels. Those estimates, in turn, inform DOE's cost-benefit calculations under EPCA for consumers, manufacturers and the nation. To determine the cost-efficiency relationship, DOE estimates the increase in manufacturing cost associated with increasing efficiency above the baseline, up to the maximum technologically feasible efficacy level for each product class. 85 Fed. Reg. at 25,333. Thus, for each product class, DOE selects a baseline lamp as a reference point against which any changes due to new or amended standards can be measured.

DOE stated in its May 1, 2020 notice that the agency "tentatively plans to consider the current minimum energy conservation standards (which were required for compliance starting on January 26, 2018 for GSFLs and July 14, 2012 for IRLs) to establish the baseline model for each product class." 85 Fed. Reg. at 25,333. DOE cited the IRL definition set forth at 10 C.F.R. § 430.2 and IRL efficiency standards set forth at 10 C.F.R. § 430.32(n)(6). 85 Fed. Reg. at 25,328, 25,333. DOE requested feedback on whether the current GSFL and IRL standards provide an appropriate baseline efficiency level for DOE to use in evaluating whether to amend the

standards for any of the product classes. 85 Fed. Reg. at 25,333-34. Despite their manifest relevance to the issues presented, DOE's notice fails to mention either the 2017 Definition Rules that amended the general service lamp definition to include IRLs or the pending litigation challenging the legality of DOE's withdrawal of those rules.

II. DOE Must Acknowledge the 45 Lumens Per Watt Backstop Standard as the Baseline Standard for IRLs

DOE's misguided tentative determination, reflected in the subject notice, to use standards set forth at 10 C.F.R. § 430.32(n)(6) as the IRL baseline is contrary to EPCA. As we have asserted in prior comments in various dockets, and in our pending litigation challenging DOE's attempted repeal of the 2017 Definition Rules and DOE's final determination not to amend the general service incandescent lamp standard,¹⁴ DOE actions disregarding EPCA's 45 lumens per watt backstop and anti-backsliding provisions are unlawful. The tentative determination would be similarly unlawful if it were to use a standard other than 45 lumens per watt as the baseline. Moreover, any amended IRL standard that is less stringent than the backstop would also be prohibited by EPCA's anti-backsliding provision. In other words, if DOE carries forward its legal error in failing to acknowledge the backstop standard, the resulting determination will be invalid. Accordingly, DOE is obligated to acknowledge the backstop in its review of the IRL standards.

Respectfully submitted,

¹⁴ See Multistate Comments in Response to DOE's Proposed Determination Not to Amend the General Service Incandescent Lamp Standards (Nov. 4, 2019) (opposing DOE's failure to consider the 45 lumens per watt general backstop standard in its baseline analysis) available at <https://www.regulations.gov/document?D=EERE-2019-BT-STD-0022-0110>; *NRDC, et al. v. DOE*, No. 20-699 (L.) and *State of New York, et al. v. DOE*, No. 20-743 (Cons.)(2d Cir. 2020) (petitions challenging DOE's final determination not to amend the general service incandescent lamp standard, 84 Fed. Reg. 71,626 (Dec. 26, 2019)). The consolidated petitions have been held in abeyance pending resolution of the challenge to DOE's attempted withdrawal of the Definition Rules.

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